

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5122 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? YES
2. To be referred to the Reporter or not? YES :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? NO
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge? : NO
NO

BABUBHAI JAGJIVANDAS PARMAR SECRETARY

Versus

STATE OF GUJARAT

Appearance:

MR GM JOSHI for Petitioner

MR DN PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 06/09/1999

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner challenges the order of punishment awarded to him by the respondent - State of Gujarat vide its order dated 12th July 1999 by reducing him in rank from the office of the Secretary to the Government in the pay scale of Rs.18,400/- to Rs.22,400/- to Chief Engineer in the department of Narmada Water Resources & Water Distribution in the pay scale of Rs.16,000/- to

Rs.20,050/- which is at Annexure 'F' to the petition and consequently, order dated 13th July 1999 giving effect to that order of reverting the petitioner to the post of Chief Engineer in the lower pay scale was made. The petitioner was served with the chargesheet dated 3rd February 1993 which contained in all six charges reproduced hereinbelow :-

Allegation No.1 ::

As the judgement given by the Arbitrator between the Ijaradar and the Government in connection with the objections of the Government of work of the Ijaradar in the Karjan Irrigation Project on the left bank of the small Canals Block No.65 to 107 in the Pre-cast concrete block and R.C.C. Tuff was not in favour of the Government, the same was challenged on the same day in the City Civil Court, Ahmedabad. The same had been informed to the Executive Engineer but still an order was passed on 8/4/1987 to pay the amount of the appeal i.e. Rs.22,18,200/- to the Ijaradar and further by telephonic instructions it was directed to immediately make the said payment which was done on 9/4/1987 to the Ijaradar. By doing this, he has favoured the Ijaradar and has caused an economic loss of Rs.22,18,200/- to the Government and has committed a misconduct. Thus, by doing so, he is responsible and has done violation of the provisions of Rule 8 [1] of the Gujarat Finance Act, 1971 and G.B.V. Manual Part - 1 page no.35 and 38 of the Rule 3[1][1] and 3[1][2] of the Gujarat State Service [Conduct] Act, 1971.

Allegation No.2 ::

The award as mentioned in the allegation no.1 had been challenged in the Judicial Court and the same was informed to the Executive Engineer, but the proposal for approving the payment of the award to the Ijaradar was made before the Financial Advisor as well as the Law Department, in which nothing was even stated about the above fact and thus, by concealing the true facts, the approval for payment has been got and the payment has been made. Such act of intentionally concealing the facts shows that he has favoured the Ijaradar and committed a grave misconduct unbecoming of a Government servant and thus, has

caused a economic loss of Rs.22,18,200/- to the Government. Thus, by doing so he is responsible and has done violation of the provisions of Rule 8[1] of the Gujarat Finance Act, 1971 and G.B.V. Manual Part - 1 page no. 35 and 38 of Rule 3[1][1] and 3[1][2] of the Gujarat State Service [Conduct] Act, 1971.

Allegation No.3 ::

As stated in the above allegation no.1, in the Appeal Scandal, at the time of hearing of the arbitration appeal, it was his duty to see that from the side of the Government the proper submissions are made. Through the case of the Ijaradar was very weak, still as from the side of the Government no proper and full submissions had been made, the judgement had gone in favour of the Ijaradar. Thus, by this way, he has failed in discharging his duties and has caused a economic loss of Rs.22,18,200/- to the Government. Thus, by doing so, he is responsible and has done violation of the provisions of Rule 8[1] of the Gujarat Finance Act, 1971 and G.B.V. Manual Part - 1 page no. 35 and 38 of Rule 3[1][1] and 3[1][2] of the Gujarat State Service [Conduct] Act, 1971.

Allegation No.4 ::

As the judgement in the arbitration appeal for the work of Small Canals of Block No.23 to 65 of the Karjan Irrigation Project was not in the interest of the Government, a suit was filed in the Judicial Court on 19/2/1987 and the same was informed to the Executive Engineer. Even then, the amount of the award has been paid by passing orders with note letter dated 21/3/87, the orders were sent immediately and instruction was given to the Additional Engineer to give the payment immediately on 24/3/87 to the Ijaradar. Thus, he has favoured the Ijaradar and has committed a misconduct and by doing an act against the interest of the Government, has caused an economic loss of Rs.11,92,400/-. Thus, by doing so, he is responsible and has done violation of the provisions of Rule 8[1] of the Gujarat Finance Act, 1971 and G.B.V. Manual Part - 1 page no. 35 and 38 of Rule 3[1][1] and 3[1][2] of the Gujarat State Service [Conduct] Act, 1971.

Allegation No.5 ::

As mentioned in above allegation no.4, the award of the arbitration appeal was challenged in the Judicial Court and knowing that fact, the amount of the award of the arbitration appeal has been paid by obtaining the approval from the Financial Advisor and therein, intentionally no such facts have been mentioned and as such, the proposal for the payment of the award has been approved and the amount has been paid to the Ijaradar. Thus, intentionally he has favoured the Ijaradar and has committed a misconduct and has caused a economic loss of Rs.11,92,400/- to the Government. Thus, by doing so, he is responsible and has done violation of the provisions of Rule 8[1] of the Gujarat Finance Act, 1971 and G.B.V. Manual Part - 1 page no. 35 and 38 of Rule 3[1][1] and 3[1][2] of the Gujarat State Service [Conduct] Act, 1971.

Allegation No.6 ::

As mentioned in para 4 above, it was his duty to see that during the hearing of the arbitration appeal proper submissions are made. He has failed in his duty. As a result, even though the case of the Ijaradar was very weak the judgement has gone in his favour. Thus, he has miserably failed in discharging his duties and has caused a loss of Rs.11,92,400/- to the Government. Thus, by doing so, he is responsible and has done violation of the provisions of Rule 8[1] of the Gujarat Finance Act, 1971 and G.B.V. Manual Part - 1 page no. 35 and 38 of Rule 3[1][1] and 3[1][2] of the Gujarat State Service [Conduct] Act, 1971.

2. The charges No. 1 to 3 are identical in terms with the charges No. 4 to 6 and they relate to the awards made in respect of two different contracts and the payment made to the contractor in pursuance of the acceptance of the award by the Government. The list of following documents was annexed with the chargesheet in support of the allegations made against the petitioner :-

[1] The award dated 16/11/1986.

[2] The letter written by the Executive Engineer, Irrigation Project Department No.6 on 7th March 1987 allegedly informing the petitioner that

objection has been filed in the Court of City Civil Judge, Ahmedabad on 17/2/1987 and 19/2/1987 respectively in respect of two awards.

[3] The notings on the concerned file relating to the award of contract and acceptance of the award.

[4] The letter of Superintending Engineer, Karjan Canal Sector dated 8/12/1987.

[5] The letter of the Executive Engineer dated 7/12/1987.

[6] The decision of the Government dated 8th April 1987 and 21st March 1987 and the copies of the relevant rules.

No witness was cited nor any oral evidence was led during the enquiry.

3. The brief facts leading to this inquiry are that, having arisen some dispute in connection with two contracts in question, the disputes were referred to Arbitrator appointed by the Government and the awards in two cases were made by the Arbitrator on consent being granted by the officer representing the State before the Arbitrator. Before the Arbitrator, services of a lawyer were also obtained. The awards were made on 16/11/1986. The same having been filed in the Court for being made the rule of the court, the proceedings were pending in the Court. The orders to accept the award were issued in one case on 21/3/1987 and another on 8th April 1987 and the payment in pursuance thereof were made. The gravaman of the charges are that, notwithstanding that objections to the awards were presented in the City Civil Court, Ahmedabad on 17/2/1987 and 19/2/1987 respectively and the petitioner was informed by the Executive Engineer, but still orders to accept the award were made on the basis of proposals not disclosing the fact of objections to the award and to pay the amount to the Ijaradar and further, by telephonic instructions, it was directed to immediately make the payment, which was done on 9th April 1987 to the Ijaradar. By these imputed acts of nondisclosure of filing objections and instruction to make immediate payment, Ijaradar was favoured and has resulted in economic loss to the State to the extent of award. The petitioner having been informed about the challenge to the award by the Executive Engineer, the proposal was made for approving the payment made to the

Ijaradar without even stating about the fact that validity of awards have been challenged in the court and expeditious payment following acceptance of award, has caused financial loss to the Government. It was also alleged in the statement of allegations against the petitioner that though the case of Ijaradar was very weak, still from the side of the Government, no proper and full submissions were made and the petitioner failed in his duty to see from the side of the Government that proper submissions are made. These charges were subject matter of question Nos. 1, 2 and 3 in respect of award concerning one contract resulting in award of Rs.22,18,200/- and question No.3, 4 and 5 were correspondingly related to another contracting resulting in award in the sum of Rs.11,94,400/-.

4. The inquiry was instituted against the petitioner as well as the Deputy Secretary in connection with the acceptance of the said awards and payments made accordingly. The petitioner denied all charges. He specifically denied in his reply that he ever received information about the letter dated 7/3/1987 issued by Executive Engineer informing about the filing of objections on 17th February 1987 and 19th February 1987 allegedly as per personal discussions held with the petitioner. It was also clearly stated by the petitioner in his reply that he was not available in Bharuch on 17/2/1987 and was out to Baroda from 16/2/1987 to 17/2/1987 denying the suggestion made in the letter dated 7/3/1987 that the objections to awards were filed in the Court as per the instructions given by the petitioner as per personal discussion.

5. As has been noticed above that inspite of this denial, no evidence except the documents relied on alongwith the memo of chargesheet was produced. The inquiry officer vide his order dated 12th July 1999 found all the allegations proved against the petitioner. The inquiry officer in coming to the conclusion has relied on the proceedings of the file which led to acceptance of award and release of money, the telegram of the Executive Engineer dated 13th February 1987 and its reply dated 16th February 1987, the letter dated 7th March 1987 issued by the Executive Engineer which is alleged to have been not received by or placed before the petitioner at any time with a specific plea that the alleged letter was not put on the file with note to that effect by the section officer and endorsed by the Deputy Secretary after the same was received by the Deputy Secretary, and the fact that the file has come before the petitioner on 18th February 1987, 2nd March 1987 and 6th March 1987

when he could have brought to the notice of the Government that the awards were under challenge. In substance, charge is that the petitioner having known of the fact that the objections to the award have been filed in the Court on 17/2/1987 and 19/2/1987 to his knowledge, he has failed to put that fact on record which led to the acceptance of the award and making of the payment to the contractor in spite of the contractor having a very weak case. Defence of the petitioner was that he did not know about the same.

6. The principle evidence relied on by the respondents to support this charge is letter dated 7th March 1987 from the then Executive Engineer referred to above. The record of proceedings which led to acceptance of the award and consequential payment, forms the core material leading to the inquiry and the impugned order; and letters dated 7/12/1987 and 8/12/1987 from Executive Engineer, Irrigation Division VI of Rajkhadi and Superintendent Engineer, Karjan Canal respectively, have been placed before the Court for perusal and I was taken through the same.

7. Ordinarily, it is not for this Court to examine order of Disciplinary Authority in a Departmental Enquiry imposing punishment as a Court of appeal and re-appreciate the evidence and the material that was before the disciplinary authority and to examine its conclusions on merits of the evidence. However, it is equally well settled and hardly needs an elaboration that where the findings recorded by such authority are based on no evidence or are perverse on the material before it, the same amounts to mistake apparent on the face of record and is liable to be interfered with in its extra ordinary jurisdiction under Article 226.

8. Having gone through the record of the case, I am of the opinion that present is the case in which the disciplinary authority has reached its conclusion without any supporting evidence and it was not reasonably possible for any person of ordinary prudence on the basis of the material which was before it to reach such conclusion.

9. It would be appropriate to take notice of one fact concerning letter dated 7/3/1983 about which there is no dispute. One Mr. N.H.Khatri, Deputy Secretary was also chargesheeted in connection with the payments made on acceptance of aforesaid two awards of arbitration vide Government letter dated 2nd February 1989 in which he was charged with suppressing the letter dated 7th March 1987

alleged to be received from the Executive Engineer while processing of the file by the Legal and Finance Departments. In his defence statement in June 1998, said Mr. Khatri has stated that, "it was not possible to put the letter of the Executive Engineer dated 7th March 1987 in the file which was received from Legal Department on 17/2/1987. After obtaining the opinion from the legal department, the file put up before the Government had accepted the arbitration award on 5th March 1987. Therefore, the objection filed on 7th March 1987 were not valid in view of the clear cut opinion of the legal department to accept the award." In other words, the Government has already decided to accept the awards on the basis of legal advice rendered by the Legal Department prior to the date of the said letter dated 7th March 1987.

10. The orders dated 21st March 1987 and 8th April 1987 which were signed by Deputy Secretary reveals that the matter regarding acceptance of the award was under consideration of the State Government for some time past, and after careful consideration, the Government is now pleased to accept the awards declared by the sole arbitrator. In order dated 21/3/1987, it also refers that orders are issued in concurrence with the legal department vide letter dated 17th February 1987 and with the concurrence of the Secretary Finance. Similar order was made in respect of other award on 8th April 1987.

11. It may be pertinent to notice from the order dated 21st March 1987 made in one case that the law department has opined as early as on 17th February 1987 that award has to be accepted, that is to say the date on which the objection to the award has been filed in Court allegedly to the knowledge of and under the instruction of the petitioner. That clearly suggests that atleast legal department which was independently examining the question of acceptance of the award on merits had opined in favour of the acceptance of award even before it could come to know about the filing of objection and obviously in the circumstances, the objection to the award could not have been filed under the instruction of law department, which is very unusual feature. Not only this, the noting on the letter dated 7/3/1987 by the Deputy Secretary conclusively establish that the said letter was not brought on the file so that could come to the notice of the superior officer inasmuch as when the letter was received by Deputy Secretary in the office of the Chief Engineer, petitioner who was designated as Joint Secretary the file has already gone for consideration in the other department and was kept

awaiting and the decision on file of acceptance of the award having already been taken prior to 7/3/1987, there was no occasion to have placed that letter for further consideration. The allegations made against Mr. Khatri, the Deputy Secretary and his defence to that allegations reveals that the letter dated 7/3/87 was never made part of record so as to reach the present petitioner. It does not stand to reason either, as would be presently seen that the Chief Engineer would have discussed the matter personally for giving instructions to the Executive Engineer to file objections inspite of the matter being still under consideration before the Government about the acceptance of the said awards on 16/2/1987 or 17/2/1987. The inquiry officer has referred to two telegrams dated 13rd February 1987 issued by the Executive Engineer seeking instructions about the next date of hearing in the two cases on 17th February 1987 and 19th February 1987 respectively and another telegram date 16th February 1987, which was issued from the Irrigation Department to Executive Engineer concerned advising him to take further date of hearing as the matter is under active consideration of the Government. Receipt of this telegram before filing objections by the Executive Engineer is appearing from letter dated 7/12/1987 of the then Executive Engineer, referred to above. If it is to be believed that the petitioner was out to favour the contractor, in ordinary course of human conduct, he would have never advised to file objections when matter of acceptance of award was still under consideration of Government. There is no material to prove basic facts of allegations except bald assertion in the letter dated 7/3/1987 about which even after having been denied, no attempt was made to lead any evidence to prove that the petitioner did receive the letter dated 7/3/1987 and the objections were filed under the instructions as per the discussions with the present petitioner. The statement in letter which was not a matter of record but on personal knowledge of the person making assertion, he having not been examined and the petitioner had no opportunity to cross examine him, cannot be treated as evidence. On 16th February 1987, the Executive Engineer has been advised through a reply telegram, which was duly received on that date, to seek adjournment as the matter was under active consideration with the Government which is in consonance with the record and proceedings on file. Another stance which the petitioner has clearly taken in defence that it was not possible for the Executive Engineer to have discussed the said matter in person at Bharuch because he was not even at Bharuch, but was at Baroda and he has relied on his travelling allowance bills for the day. No attempt has been made to lead any

evidence to prove the facts stated in the letter dated 7/3/1987 about the assertion made by the Executive Engineer about the personal discussion. The executive Engineer was never put in the witness box where the petitioner could have an opportunity to cross examine the said Executive Engineer. On the contrary, the inquiry officer has further placed reliance on the letter dated 7/12/1987 about personal discussion suggestion that the said Executive Engineer had travelled to Gandhinagar, a case nowhere put in the allegation of the charges to seek instructions to file objection to the award on 17/2/1987 and 19/2/1987 respectively. The allegations of charges suggest that objections to awards were filed on the same day, the papers were filed in the Court and information was conveyed to the petitioner vide letter dated 7/3/1987 and yet the petitioner made proposal for payment. The allegation of filing objections under personal instructions was not subject matter of charge itself. As it is a fact mentioned in letter dated 7/3/1987, the same had been specifically denied. Department has not made any attempt to prove this fact, which was not a matter of record, but of personal knowledge.

The suggestion in the chargesheet that objections were filed on the same day is quite vague to answer to any definite date referable to 'same day'.

12. Record reveals that the law department has opined on 17th February 1987 that in its conclusion no useful purpose would be served by challenging the award in the Court of law after giving detailed reasons for sanctioning the same and has made its observations that, in view of the above submission whether irrigation department has to accept the award or not. Thus, before the filing of objections, Law Department has already opined to accept the award. to draw any inference that later filing of objection by officer incharge could have influenced its opinion. On submission made on 5th March 1987, the finance department noted, 'the law department has already expressed their view that no useful purpose would be served by challenging the award in the Court of law. If so, there is no question of acceptance or otherwise of the award as it is not a matter of choice. The award has to be accepted in toto and claim settled amicably immediately.'

13. The notings on the file relating to award of Rs.11,92,400/- goes to show that the present petitioner agreed with the office note proposal to approve the award after consultation with the Special Secretary [Finance] and Financial Adviser and the Legal Department, about

reasonableness of which A.G.P. has opined earlier. It is moved on 8/1/1987 when admittedly no objections had been filed to award. On 5/2/1987, the petitioner noted 'we may get opinion of Law Department as desired by the Finance.' Thereafter, the file was forwarded by the Financial Adviser and it was referred to the Law Department for its opinion on 12/2/1987. On 17/2/1987 after discussing in detail and finding that objections to award may not have any merit, it opined, 'it appears that the department representative had agreed with the findings of Arbitrator. It is a fact that there was a premature termination of the contract and therefore, no useful purpose will be served by challenging the award in the court of law. In view of the above circumstances, Irrigation Department may decide whether to accept the award or not. The last date for filing objection for the award is 22/2/1987.'

14. This goes to show that until 12/2/1987, no decision has been taken to file any objection to the award, and the matter was being discussed on merit and the Law Department has opined to accept in consonance with the opinion given by the D.G.P. On this opinion, the petitioner had put a note of agreement on 18/2/1987 by pointing out that the last date of filing award is 22/2/1987. Obviously until putting this note, the signatory cannot have any knowledge of filing of the objections to award and had the objections filed to his knowledge on his instructions, he would not have put this note. On the other hand, this note is in consonance with his earlier note dated 8/1/1987 nor on these dates any knowledge of letter dated 7/3/1987 can be attributed. This opinion was accepted by Finance by noting dated 5/3/1987 : 'Law Department has already expressed their view that no useful purpose would be served by challenging the award in the court of law, if so, there is no question of acceptance or otherwise of the award as it is not the matter of choice. The award has to be accepted in toto and claim settled amicably immediately.'

15. Proceedings relating to other award for the sum of Rs.22,18,200/- has also proceeded almost on the same lines. On 17/1/1987, the petitioner has furnished the matter for consideration alongwith the opinion of Superintending Engineer and A.G.P. of the City Civil Court, who had opined that the award is reasonable. On some queries raised by Finance Department, on 5/2/1987, the petitioner has reported that the grounds raised by the Finance has been complied with by the Superintending Engineer and that the Superintending Engineer has also furnished letter from D.G.P. opining the reasonableness

of the award and he requested for taking early decision on the approval to avoid 18% interest in case award is approved and payment is delayed. By a detailed note, the Secretary Finance and Financial Adviser, on 20/2/1987 had reservations about the functioning of the Department while dealing with the arbitration matters in general before the arbitrators and about the fees charges by the arbitrator from both the parties. He agreed with the suggestions earlier made in general. Thus, no reservation was shown in accepting the award, which was sent to finance department before filing of objections, and before information which is alleged to have been received through letter dated 7/3/1987. When this matter was again referred to Law Department on 23/2/1987 on that question, the Law Department opined that it may be stated that both the parties have agreed and therefore, the award is required to be accepted so far as that aspect is concerned. It also opined that since the amount has already been paid to the arbitrator, the costs of arbitration cannot be agitated. This opinion was rendered by the Law Department on 13/3/1987. It appears that again there was reservation about payment of costs and therefore, again the matter was referred to Law Department as to the question of fees or remuneration of arbitrator for arbitration proceedings on which Law Department rendered its opinion on 22/4/1987 and thereafter, the award was accepted. These proceedings also goes to show that so far as the decision to accept the award is concerned, the same had been accepted in principle, before the letter dated 7/3/1987 had emanated and the complicity of the non-disclosure of the facts when the applicant had opportunity to so disclose cannot at all be interfered from the record of the proceedings. The difference in the dates of two orders appears primarily on the ground of doubts about fees of the arbitrator in the later case referred to above.

Thus, in one case, the decision to accept the award had been taken even before the letter dated 7/3/1987, the foundation of charges against the petitioner was even written.

16. From the aforesaid, it is not possible to reach in any reasonable manner the conclusion that the petitioner had knowledge about the filing of the objection on 17/2/87 and 19/2/87 respectively in the two matters, nor there is any evidence that those two objections were filed in sequence of a personal discussion regarding the same with the Executive Engineer and the petitioner, nor there is any evidence to show that any proposal was moved by the petitioner after

17/2/1987 or 19/2/1987 for the acceptance of the award. It is apparent from the record that the question of acceptance of the award was already under consideration much prior to the filing of the objection with the law department and finance department and law department have already opined in favour of acceptance of the award, before writing of letter about filing of objections, nor there is any evidence to reasonably reach the conclusion that the said objections were file by the Executive Engineer in consultation with the petitioner on the aforesaid two dates to attribute knowledge of the filing of the objections to him.

17. The substance of another charge No.1 and 4 is that the amount of award to the Ijaradar was directed to be paid through telephonic instructions by the petitioner. This suggestion is rendered wholly unfounded by the letter of the Superintending Engineer, Karjan Canal Circle dated 8/12/1987 relied on by the Department, which in no uncertain terms states that instructions communicated to him on phone were by Deputy Superintendent [Budget] for payment immediately without awaiting for Government approval as the same has already been cleared by them. It is, on receiving this instructions about the making of the payment from Deputy Secretary, the Superintending Engineer has confirmed the fact disclosed to him by the Deputy Secretary with the petitioner on phone, which he confirmed. Factually, even the communication by Deputy Secretary is not alleged to be wrong. There is no material on record from where inference can be drawn that the petitioner has taken any initiative for releasing immediate payment in pursuance of the order of accepting the award and making the payment to the contractor. There is no allegation that payment was not in fact approved by competent authority as informed by D.S. [Budget] while passing on instructions to make payment. Therefore, so far as the charges no.1 and 4 are concerned, the record discloses no material on the basis of which it can be said to have proved either on the material relied on by the disciplinary authority or from the record of the proceedings made available to the Court.

18. The charge no.2 and 5 are consequential inference drawn from the charges leveled under allegations No.1 and 4. Under these two charges relating to two different awards that, notwithstanding petitioner having been informed by the executive engineer about the filing of the objection, he has not deliberately stated the above facts on record and thus, by concealing the true facts, the approval for payment has been got and the payment has

been made. That show that he has favoured the Ijaradar and committed grave mistake unbecoming of the Government servant.

19. As has been noticed above, there is no evidence to suggest that the petitioner had at any point of time knowledge about the filing of the objection, but the record directs to the contrary that throughout the officials dealing with the question of award were considering on merit whether to accept the award or not and on seeking opinion from the law department, which came as early as on 17/2/1987, a note of approval was put on 5/3/1987 and was not at all influenced by the filing of the objections, but was independently on the merit of the award. The mere fact that, by some officer objections were filed before the issue was considered by the Government in its various departments, would not make a case which was considered by the competent authority fit to be accepted as a weak case. If State has taken decision on bonafide consideration of merits of the case by concerned departments at highest level, unauthorised filing of objections by one of its officer without instructions, would not have automatically rendered the decision of finance department in consultation with law department suspect. If the acceptance of a weak case was as a result of opinion tendered by the highest officers concerned uninfluenced by the filing of the objections and on the basis of opinion which was tendered by the Government advocate, responsibility of inefficiency must rest with those who have examined the merit of the case. Implicity of the petitioner therefore cannot be assumed merely on the basis of the fact that the officer in charge of the case has filed objections on 17/2/1987 and 19/2/1987 without approval of the law department and without proof under whose instructions they have been filed.

20. Like wise, allegations No.3 and 6 which relate to neglecting duty in conducting the case, no material has been brought on record in the enquiry to suggest that the petitioner was in any way responsible for the conduct of the case before the Court. The executive engineer was the officer in charge of the case and advocate has been appointed. In ordinary course, the legal department issues instructions. It is no where been suggested that at any stage, the intervention of the petitioner was envisaged in the conduct of the case. If a person was not officer in charge of the case to represent the Government and was not directly concerned with its conduct, merely because an officer subordinate to him chooses to file objections on his own, cannot render the

superior officers responsible who have no knowledge about it and be termed as guilty of negligent in discharging his duty in conduct of the case.

21. On the totality of the material placed before this Court, I have no hesitation in reaching the conclusion that the findings recorded by the inquiry officer and confirmed by the disciplinary authority on all counts are based on no evidence and are such to which no reasonable person of ordinary prudence would reach and the impugned order must be deemed to suffer from error apparent on the face of record.

22. In the circumstances, the petition deserves to be allowed and is hereby allowed. The impugned order is hereby quashed. Rule is made absolute accordingly. The petitioner shall get the costs of this petition.

parmar*